NO. 21249

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MELVIN CHARLES HULL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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I

JURISDICTION AND STATEMENT OF THE CASE

A. Pre-trial Proceedings.

On March 2, 1966, a two-count indictment was returned by the Grand Jury for the Southern District of California, charging appellant with violation of Title 18 U. S. C. 2115, breaking into a building used as a Post Office [C. T. p. 2]. 1/ On April 25, 1966, appellant was arraigned before the Honorable Irving Hill, at which

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1/ "C. T." refers to Clerk's Transcript of Record.

time counsel was appointed by the District Court to represent appellant. Upon motion of appellant's counsel the District Court appointed a psychiatrist to examine appellant pursuant to the provisions of Title 18 U. S. C. 4244 [C. T. p. 4]. On May 16, 1966, a competency hearing was held before Judge Hill. On that date the District Court found the appellant presently sane and mentally competent so as to be able to understand the proceedings against him and to assist in his own defense [C. T. p. 5]. Thereafter the appellant entered a plea of not guilty to both counts of the indictment, and the case was set for trial on May 31, 1966.

B. Trial Proceedings.

On May 31, 1966, the case was transferred for trial before the Honorable Ray McNichols. Preliminary to the presentation of the appellant's case, a hearing was held on the admissibility of statements made by appellant to law enforcement officials. At this hearing Detective Larry Reid of the Clark County Sheriff's office and U. S. Postal Inspector D. L. DeLaney testified for the appellee. The appellant, Melvin Charles Hull, testified in his own behalf. (The appellant did not testify at the trial.) [C. T. p. 8]. At the conclusion of the hearing the Court ruled that the appellant's statements had been voluntarily given and that no delay in arraignment had occurred [R. T. pp. 3-61]. [2/] On June 1, 1966,

2/ "R. T. " refers to Reporter's Transcript of Record.

the appellant was convicted on both counts of the indictment after a trial by jury. On June 3, 1966, the appellant was sentenced to the custody of the Attorney General of the United States for a period of four years on Count One of the indictment and four years on Count Two of the indictment, the sentence on Count Two to run concurrently with the sentence on Count One. The appellant was made eligible for parole under Title 18 U. S. C. 4208(a)(2) [C. T. p. 12].

C. Jurisdiction

Jurisdiction of the District Court was founded upon Title 18 U. S. C. 2115 and 3231. A timely appeal was taken to this Court pursuant to Title 28 U. S. C. 1291, 1294(1) [C. T. p. 18].

II

STATUTE INVOLVED

Title 18 U. S. C. 2115 provides as follows:

> "Whoever forcibly breaks into or attempts to break into any Post Office, or any building used in whole or in part as a Post Office, with intent to commit in such Post Office, or building or part thereof, so used, any larceny or other depredation, shall be fined not more than $1,000.00 or imprisoned not more than five years, or both."

III

STATEMENT OF FACTS

A. Pre-Arrest

On February 9, 1966, the East Los Angeles Branch of the U. S. Post Office, 975 S. Atlantic Boulevard, Los Angeles, California, was broken into and burglarized [R. T. pp. 73-74]. On February 11, 1966, the Bailey Station of the U. S. Post Office, 139 North Washington Avenue, Whittier, California, was broken into and burglarized [R. T. pp. 79-81].

Detective Larry Reid, Clark County Sheriff's Office, testified that on Saturday, February 12, 1966, at approximately 11:00 p. m., he and his partner, Detective Rutkowiski, were dispatched to the Hirsch Check Cashing Agency, in Las Vegas, Nevada, to investigate an attempted forgery [R. T. p. 95, lines 5-8]. There he was informed by the proprietor that a person had attempted to cash a check but had been refused because of suspicious circumstances [R. T. p. 95, lines 9-13]. At the hearing on the motion to suppress, Detective Reid described the suspicious circumstances, i. e., that the California driver's license presented as identification was not validated, and the party listed his phone number as having eight digits [R. T. p. 9, lines 23-25; p. 10, lines 1-2]. Additionally, Detective Reid was informed that after the subject left, the true payee was contacted by the Hirsch Check Cashing Agency and he denied granting authority for anyone else

to receive or cash his check [R. T. p. 10, lines 11-13]. Detective Reid further testified that the proprietor related to him that the payee's name on the check was John Roy Griffin [R. T. p. 10, line 11]. Detective Reid continued by stating that the proprietor related he had observed the party leave the Hirsch Check Cashing Agency in a blue Cab No. 193. Prior to leaving the Hirsch Check Cashing Agency, a signed crime report for possible forgery was prepared. Detective Reid testified that the driver of Cab No. 193 was contacted and it was determined that he had transported a fare from the Hirsch Check Cashing Service to the Galaxie Motel [R. T. p. 90, lines 8-17]. At the Galaxie Motel it was ascertained that a person by the name of John R. Griffin was registered in Room 202 [R. T. p. 97, lines 4-10].

B. Arrest

A period of approximately two hours had elapsed in tracing the above described steps; thereafter at approximately 1:00 a. m., on Sunday, February 13, 1966, Detective Reid knocked on the door of Room 202. The door was opened by the appellant. Detective Reid identified himself and requested identification from the appellant. The appellant produced a California driver's license in the name of John Roy Griffin [Government's Exhibit #1; R. T. p. 98, lines 8-11]. Thereafter, Detective Reid asked the appellant if he had attempted to cash a large Treasury Check, to which inquiry the appellant replied affirmatively and at that time produced

the check [Government Exhibit #2; R. T. p. 98, line 25; p. 99, line 103]. Detective Reid testified that he then informed the appellant of the facts which he had ascertained respecting the check and identity of the payee, at which time the appellant stated, "Well, I might as well tell you, I am Melvin Hull and I was just released from Federal penitentiary" [R. T. p. 101, lines 18-22]. The appellant was placed under arrest and advised that " . . . he had a right to counsel and he did not have to make any statement at all" [R. T. p. 102, line 103]. The time was approximately 1:15 a. m. [R. T. p. 102, line 12]. The appellant was thereafter transferred to Clark County Sheriff's Office building. On route the appellant made a statement relating to the robbery of the Whittier Post Office, described in Count Two of the indictment [R. T. p. 103, lines 5-25; p. 104, lines 1-4]. The appellant arrived and was booked at the County Jail at 1:32 a. m. [R. T. p. 113, line 10]. Having consented to have his statement reduced to writing, the appellant, commencing at 2:10 a. m., repeated his part of the dialogue concerning the robbery of the Whittier Post Office to a stenographer. This oral statement was completed at 2:40 a. m. [R. T. p. 114, line 102]. The appellant was taken to his cell, and at approximately 4:00 a. m., he read, signed, and initialed the transcribed statement. The opening paragraph of this statement was read verbatim into the record. In substance it stated that Detective Reid had identified himself and advised the appellant of his right to advice of counsel before making any statement and that he need not make any statement at all or to

incriminate himself in any manner; that the appellant had waived his right to advice of counsel and voluntarily made the statement knowing that it could be used against him; that the statement was made of appellant's own free will without promise or hope of reward, fear, threat or physical harm [R. T. p. 20, lines 18-25; p. 21, line 109].

Mr. Donald DeLaney, Postal Inspector, U. S. Post Office Department, Las Vegas, Nevada, next testified that he interviewed the appellant at the Clark County Jail on Sunday morning, February 13, 1966, at approximately 9:30 a. m. The interview lasted approximately one hour [R. T. p. 125, lines 4, 5]. At that time, Inspector DeLaney testified that he identified himself to the appellant, advised him that he need not make a statement, that he had a right to counsel, and that any statement he did make must be voluntary and could be used against him in a court of law [R. T. p. 119, lines 20-25]. The appellant indicated that he understood these admonitions [R. T. p. 120, lines 2-3]. Thereafter, witness DeLaney testified as to the conversation had with the appellant relating to the facts surrounding the breaking into of both the Post Office in Whittier, California, described in Count Two of the indictment, and the breaking into the East Los Angeles Post Office described in Count One. The appellant's oral statement was subsequently reduced to writing and signed by the appellant on Monday morning, February 14, 1966, at approximately 10:00 a. m. [Government Exhibit #4; R. T. p. 123, lines 19-25; p. 124, lines 1-2, 10-18]. Postal Inspector DeLaney, during the pre-trial

hearing on the motion to suppress the appellant's statements, testified that at approximately 10:30 a. m. on Monday, February 14, 1966, he called the Postal Inspector's Office in Los Angeles, California, regarding the obtaining of a Commissioner's complaint. At approximately 1:00 p. m., Inspector DeLaney was informed that a complaint had been filed in the Southern District of California, charging the appellant with a violation of Title 18 U. S. C. 2115 [R. T. p. 32, lines 14-22]. Thereafter, Inspector DeLaney contacted the U. S. Commissioner A. G. Blad of Las Vegas, Nevada, and arranged that the appellant be arraigned at the Clark County Jail. Subsequently, the appellant was so arraigned [R. T. p. 33, lines 1-19].

The appellant, Melvin Charles Hull, testified only at the pre-trial hearing on the motion to suppress. At that time the appellant denied showing Detective Reid a California driver's license in the name of John Roy Griffin or a U. S. Treasury check in that name. The appellant stated both items were obtained by the officers in the course of a search of his motel room [R. T. p. 40, lines 1-22]. The appellant admitted that he was informed of his constitutional rights and that he need not make any statement [R. T. p. 40, line 25], but testified that Detective Reid "pushed on me and let me know that I might possibly receive physical abuse if I didn't make one" [R. T. p. 41, lines 3-7]. The appellant testified that he was fearful as a result of physical abuse he had received some six years earlier when arrested in another jurisdiction in connection with another offense [R. T. p. 42, lines

1-17]. The appellant further testified as to giving statements to both Detective Reid and Postal Inspector DeLaney.

On rebuttal, Detective Reid denied "pushing" the appellant and stated that he only placed his hand on appellant as a sign that he was under arrest [R. T. p. 58, lines 10-24].

IV

ARGUMENT

A. THE ADMISSIONS BY APPELLANT WERE VOLUNTARY.

1. Appellant's Statements to State Officers.

The first contact had by law enforcement officers with appellant was at 1:00 a. m. Sunday, February 13, 1966, when between 1:00 a. m. and 1:15 a. m. State Police Officers questioned him as to his identity [R. T. p. 13, line 16] and as to his activities earlier that evening [R. T. p. 15, lines 5-10]. During this period the officers contacted their office by telephone [R. T. p. 16, lines 4-8] and the appellant was placed under arrest at 1:15 a. m. [R. T. p. 17, lines 23-24]. He was advised of his right to an attorney and his right not to make a statement [R. T. p. 17, lines 4-8]. The appellant was transported to the Clark County Jail which took approximately 15 minutes [R. T. p. 18, lines 1-3]. On route to the County Jail the appellant made certain statements

relating to the Post Office burglary in Whittier, California [R. T. p. 18, lines 14-16]. The appellant was booked for forgery at the Clark County Jail at 1:32 a. m. [R. T. p. 113, line 10]. Thus, in a period of 32 minutes the appellant was identified, arrested, transported, made certain admissions, and was booked.

Between 1:32 a. m. and approximately 2:10 a. m. the appellant awaited the arrival of a stenographer to record his statement [R. T. p. 18, lines 18-25]. At 2:10 a. m. the appellant dictated his statement to a stenographer. This interview lasted a total of 30 minutes [R. T. p. 114, line 2]. The appellant was then returned to his cell. At approximately 4:00 a. m. the transcribed statement was brought to the appellant who read and signed it [R. T. p. 21, lines 12-24].

At all times appellant was advised as to his constitutional rights. At the time of his arrest at 1:15 a. m., the appellant was advised as to his right to an attorney and that he need not make a statement [R. T. p. 17, lines 4-8; p. 24, lines 22-25; p. 102, lines 1-3]. At the Clark County Jail at 2:10 a. m., prior to making his statement to a stenographer, the appellant was advised as to the nature of the interview of his right to the advice of counsel before making any statement, and his right not to make a statement. The appellant thereafter expressly waived his " . . . right to advice of counsel . . . " and acknowledged that his statement was voluntarily made knowing that it might be used against him at trial. The appellant further declared that his statement was made of his " . . . own free will without promise or hope of reward,

without fear or threat or physical harm, and without coercion . . ." [R. T. p. 20, lines 18-25; p. 21, lines 1-9]. These admonitions were again repeated at 4:00 a. m. and incorporated in the first paragraph of the statement appellant signed at that time [R. T. p. 21, lines 13-24].

The Court in clarifying the appellant's knowledge as to his rights asked him:

> "Q. Did you know when you were arrested this time that you had a right to have an attorney, did you know this?
>
> "A. Yes." [R. T. p. 56, lines 20-23].

At the pretrial motion to suppress, appellant relied on the threat of physical abuse as the basis for negating the voluntary nature of his statement. Appellant claimed he was "pushed on" by Detective Reid as the latter was advising him of his right to to make a statement [R. T. p. 41, lines 3-7]. When asked by his own counsel, "Did you receive any physical contact by the officer at any time?", appellant answered, "Just when he pushed on me" [R. T. p. 41, lines 17-19]. The appellant testified that he had some six years earlier been physically abused by other police officers in another city and that this affected his outlook on this occasion [R. T. p. 41, lines 24-25; p. 42, lines 1-19].

Detective Reid testified that the only time he placed his hand on appellant was to indicate that he was under arrest. Reid denied ever physically abusing the appellant. On redirect examination

Detective Reid testified:

"Q. Did you at any time ever push him up against a wall as he testified to?

"A. No.

"Q. Did you ever strong-arm him in any way?

"A. No. [R. T. p. 58, lines 20-25].

The Court questioned Detective Reid:

"The defendant indicated while you were telling him of his right at the same time you were telling him in such a way it might sound as though if he wanted attorney he would get pushed around. Did this occur?

"A. No." [R. T. p. 59, lines 12-18].

Appellant urges the application of Miranda v. Arizona, 348 U. S. 436, as it bears on the voluntariness of his statement. The holding of Miranda was not effective at the time of the trial of his case, May 31, 1966. Johnson v. New Jersey, 384 U. S. 719 (1966). Further, it is clear from the facts that the spirit of Miranda is not contravened in this case. The appellant was arrested at 1:15 a. m. and advised of his right to an attorney and that he need not make any statement. In the next few minutes after he was arrested and was being transported to the County Jail the appellant made certain admissions. Within 38 minutes after appellant arrived at the jail, after again being advised as to his rights, appellant repeated his statement to a stenographer. On cross-examination the

appellant testified that he read and signed the statement he made to Detective Reid [R. T. p. 52, lines 17-23], the first paragraph of which incorporates the lengthy admission given to him. Therefore, appellant's own admission, the testimony of the investigators, and the appellant's signed statement support his knowledge of his rights and his voluntary failure to exercise them.

With respect to appellant's contention that his statements were the product of intimidation or physical abuse, the record reflects that such charge is wholly unsubstantiated.

As the Court reflected,

> " . . . I can't say the defendant in his own mind did not have some fear of apprehension. But I don't believe the officers so treated him to deprive him of his rights. . . ." [R. T. p. 60, lines 9-12].

2. Appellant's Statement to Postal Inspector DeLaney.

Appellant contends that his signed affidavit subsequently given to Postal Inspector DeLaney was also involuntary [Government Exhibit #4] as being the product of the first unlawfully obtained statements made to Detective Reid.

Inspector DeLaney first spoke with the appellant at 9:00 a. m. Sunday, February 13, 1966, at the Clark County Jail. Appellant does not deny that he was fully advised of his constitutional rights by Inspector DeLaney prior to making any statement [R. T.

p. 29, lines 13-24; p. 119, lines 20-25], nor that he agreed to have his statement reduced to affidavit form [R. T. p. 30, lines 20-23]. There is similarly no dispute that appellant on the next day Monday, February 14, 1966, read and signed the affidavit after again being advised of his rights [R. T. p. 124, lines 10-18].

Appellant now contends that the affidavit was involuntarily given. However, a search of the record fails to give any support to his position. On the contrary, the last paragraph of appellant's affidavit, Government's Exhibit 4, is particularly illuminating on the issue of the appellant's state of mind. It reads as follows:

> "After giving the matter much thought, I believe I committed the two post office burglaries and cashed the stolen Treasury Checks with a view to being apprehended. I feel that I have become institutionalized due to my long periods of incarceration and cannot function outside of prison. I am hopeful that if I am returned to prison I will receive some help with this problem."

Consistent with appellant's professed desire to be returned to prison for help are his admissions made nearly contemporaneously with his arrest by Detective Reid, and his subsequent affidavit to Postal Inspector DeLaney. Although the appellant denies making such a statement [R. T. p. 55, lines 5-21], it appears in the affidavit which he read and signed [R. T. p. 55, lines 23-24].

B. THERE WAS NO UNNECESSARY DELAY IN ARRAIGNMENT.

1. No State Magistrate Was Available On Sunday to Arraign Appellant.

The appellant was arrested at approximately 1:15 a. m. Sunday, February 13, 1966, by officers of the Clark County Sheriff's Department, Las Vegas, Nevada, on the basis of a signed crime report prepared several hours previously [R. T. p. 101, line 25; p. 102, lines 1-3]. Thereafter, between 1:15 a. m., and his arrival at the Clark County Jail at 1:32 a. m., the appellant made admissions with respect to one of the Post Office burglaries set forth in Count Two of the Indictment [R. T. p. 18, lines 4-16]. Upon arrival at the Clark County Jail the appellant was immediately booked on a violation of state law [R. T. p. 104, line 17]. Commencing at 2:10 a. m. and terminating some 30 minutes later, the appellant repeated his statement to a stenographer [R. T. p. 114, line 2].

Detective Reid testified that no state prisoner would have been brought before a Magistrate in the State of Nevada on a Sunday. Reid stated that a person arrested for a crime must be brought before a Magistrate in a reasonable time " . . . no more than when the next court session is held or normally in session" [R. T. p. 115, lines 15-16]. Reid concluded by stating that in the instant case the appellant would have been brought into Court "according to the work-load, Monday or Tuesday" [R. T. p. 116, line 7].

Thus, no admissions made by the appellant to State Officials were incident to or caused by an unnecessary delay in arraignment as no Magistrate was available earlier than Monday. Further, it should be noted that the appellant's first admissions to Detective Reid were made so nearly spontaneously with his arrest that the issue of whether or not there was a delay in bringing the appellant before a Magistrate would be of no significance under the instant facts.

2. Interrogation By Federal Agents:

Nearly eight hours later, at approximately 9:00 a.m. on Sunday, February 13, 1966, the appellant was interviewed by Postal Inspector Donald DeLaney at the Clark County Jail. The appellant was at that time still in custody of the State authorities.

It is well settled that in the absence of a "working Agreement", whereby the state officials were acting at the behest of, or as agents of the federal authorities, the statements made to Inspector DeLaney were properly admissible and are not objectionable under the Mallory-McNabb rationale. Westover v. United States (C.A. 9, 1965), 342 F.2d 684, 686 (Reversed on other grounds, 384 U.S. 436, dissent at page 525, 1960); United States Coppola (C.A. 2, 1960), 281 F.2d 340, 342; Watts v. United States (C.A. 9, 1960), 273 F.2d 10, 12. In the instant case the appellant was arrested on the basis of a state forgery crime report. The federal agents were not responsible for the detention of

appellant by the state authorities; nor can any argument be proffered to substantiate that at the time of the appellant's arrest by the State of Nevada Detective Reid was acting for or as agent of the federal officials or for the sole purpose of enabling federal officials to pursue their investigation. United States v. Coppola, supra, at 344; Anderson v. United States, 273 U.S. 28, 33.

3. There Was No Delay In Arraignment By Federal Officers.

The U. S. Postal Inspectors had no authority to have the appellant arraigned at any earlier time than the facts indicated occurred herein.

The appellant was arrested in Las Vegas on Sunday and made admissions as to a federal violation occurring in the Southern District of California. The earliest possible time to obtain a Commissioner's complaint from the Southern District of California was Monday morning. As the record reflects, Inspector DeLaney called the Postal Inspectors in Los Angeles, California, on Monday morning and related to them the facts of the case. Shortly after lunch Inspector DeLaney was informed by Los Angeles that a complaint had been filed in the Southern District of California, charging a violation of Title 18 U.S.C. 2115. Thereafter, the U. S. Commissioner in Las Vegas, Nevada, was immediately contacted by Inspector DeLaney and an appointment was made to arraign the appellant at the Clark County Jail [R. T. p. 32, lines 15-25; p. 33,

lines 1-20; p. 22, lines 22-23].

Assuming, arguendo, that, at best, the appellant might have been arraigned several hours earlier on Monday, February 14, 1966, it is not conceivable that any delay in taking him before the U. S. Commissioner on Monday after he had made his admissions at 9:50 a. m. on the preceding day could have had any bearing upon the voluntary character of such statements.

United States v. Mitchell, 322 U. S. 65 (1944);

Holt v. United States (C. A. 8, 1960),

280 F. 2d 273, 274.

C. NO SEARCH WAS CONDUCTED.

Appellant contends that the Las Vegas police officers conducted a search of his motel room prior to placing him under arrest at 1:15 a. m. on February 13, 1966. Appellant's testimony is in direct conflict with that of Detective Reid who states that the appellant voluntarily produced a California Driver's license and a check [Government's Exhibit #2]. On direct testimony Detective Reid stated:

"Q. After he came to the door what did you do then again?

"A. We identified ourselves as police officers and asked the subject to produce identification.

"Q. Did the defendant produce identification?

"A. Yes, he produced a California Driver's license in the name of John Roy Griffin." [R. T. p. 13, lines 15-20].

Detective Reid further testified:

"Q. When he presented this (the California Driver's license) at your request what, if any, conversation did you have with him?

"A. Well, then I asked him if he had been to the various places on the strip area, on the Las Vegas Boulevard in the County of Clark, attempting to cash a large tax refund Treasury check, to which he stated, 'Yes'. And at this time he produced a Treasury check." [R. T. p. 15, lines 3-10].

The appellant denied that he had produced the driver's license or the Treasury check for the police [R. T. p. 40, lines 8-13]. It is interesting to note that defense counsel did not object to the driver's license being introduced into evidence although, according to appellant, this was also allegedly illegally seized by the police [R. T. p. 133, lines 3-9].

In essence, appellant is challenging the trial court's appraisal of the credibility of the witnesses implicit in its finding that no illegal search was conducted [R. T. p. 60, lines 6-25]. It is well settled that no such challenge is permissible in the Appellate Court.

As stated in Nuelsen v. Sorensen (C. A. 9, 1961), 293 F. 2d

459 at 460:

> "In so evaluating the evidence the trial Court's appraisal of the credibility of the witnesses is to be accepted, no challenge to such appraisal being permissible in the Appellate Court. Appellant's attack upon the credibility of witnesses whose testimony was apparently accepted by the Court will therefore be disregarded."

See also:

United States v. Orlando Fernandez-Delgado

(C. A. 9, Oct. 27, 1966, No. 20,647).

The appellant did not limit the issue of voluntariness and the alleged search to the motion to suppress. In cross-examination of appellees' witnesses he raised for the jury's consideration the same issues. Nearly half of appellant's counsel's closing argument to the jury was devoted to the question of the voluntary nature of appellant's statements and implicitly the alleged search [R. T. p. 149, lines 18-25; p. 150, lines 1-25; p. 151, lines 1-25; p. 152, lines 23-25]. In addition, the Court instructed the jury on the question of confessions, admissions, voluntariness, and the weight to be given such statements [R. T. p. 161, lines 11-25].

Thus, the question of fact as to whether or not a search was conducted was ruled on first by the Court and thereafter by the jury in the course of its deliberation. Ordinarily, where there is a dispute as to fact which must be resolved from the conflicting testimony of witnesses, the findings of the trial judge or jury who

had the opportunity to observe the demeanor of the testifying witnesses and to judge their credibility are conclusive upon appeal unless clearly erroneous. As reflected above, the findings in this case are clearly supported by the record.

Bloom v. United States (C. A. 9, 1959),
272 F. 2d 215, 223;
Overman v. Loesser (C. A. 9, 1953),
205 F. 2d 521, 522.

V

CONCLUSION

The appellant's statements were voluntarily made. The threshold statement of his complicity in the offense made at the time of his arrest, his subsequent cooperation in repeating his statement to state authorities in the presence of a stenographer and later to Postal Inspector DeLaney, as well as the revealing admissions as to his desire to be returned to an institution from which he had been released only five days earlier all bolster the voluntary nature of his remarks.

There was no unnecessary delay in arraigning the appellant by state authorities. No Magistrate was available earlier than Monday. Similarly, the federal officials had no authority to arraign the appellant earlier than the facts herein reflect occurred.

There is nothing in the record to support appellant's contention of the use of physical abuse or of an illegal search.

Therefore, the judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Robert M. Talcott

ROBERT M. TALCOTT